



U.S. Department of Justice

*United States Attorney
District of Montana*

MICHAEL W. COTTER
United States Attorney

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Helena, Montana 59626

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February 11, 2016

Dean LaFromboise
04636-046
Terminal Island FCI
PO Box 3007
San Pedro, CA 90731

Re: U.S. v. Dean LaFromboise,
1:1994-CR-82

Dear Mr. LaFromboise:

In recent 2255 decisions, the District Court has expressed concern over this office's *Giglio* compliance in several cases prosecuted by former AUSA Jim Seykora. AUSA Seykora started in the Department of Justice in 1984, and retired in 2012. The concern raised by the District Court involves situations in which impeachment information under *Giglio* regarding cooperating witnesses may not have been conveyed to the defense – e.g., offers or promises made or other benefits provided directly or indirectly to any witness in exchange for cooperation or testimony, including dismissed charges, immunity or offers of immunity or expectations of downward departures or reduction of sentence.

As you know, the standard for showing prejudice is materiality of the perceived due process violation. The United States Supreme Court has cautioned that: “[t]he mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish ‘materiality’ in the constitutional sense.” *U.S. v. Agurs*, 427 U.S. 97, at 109-10.

In one of the cases, *United States v. Martin Garcia*, CR-04-087, Chief Judge Richard Cebull, in denying a 2255 motion (09/2011) criticized AUSA Seykora for eliciting from a government witness during trial that the witness did not recall being made “any promises” by the United States. In fact, Seykora had given the government witness two immunity letters, after which she testified before the grand jury and was debriefed by the FBI. According to Judge Cebull, the questions and answers “left a false impression with the jury” and with the court. However, the Judge ruled that the false testimony was not material in light of the cumulative evidence admitted during the trial that led to Garcia’s conviction. This ruling was affirmed on appeal by the Ninth Circuit.

Nevertheless, in light of the court’s concern and because this office is committed to ensuring that all criminal defendants receive a fair trial, we are reaching out to all defense counsel in cases tried by AUSA Seykora. The above entitled case is one which we have

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witness impeachment material would have arisen. If a review of your file and your recollection of events leads you to believe that further inquiry into this issue is appropriate, our office will make available, upon written request, relevant portions of our files for your review.

We understand that AUSA Seykora often conveyed impeachment information informally. Even without a documented disclosure of impeachment information, however, there would be no *Giglio* violation if the defendant had sufficient actual knowledge to fully cross-examine a government witness. Accordingly, in making your request, please identify with as much specificity as possible where a potential *Giglio* concern exists. Our office will not conduct a wholesale review of any file predicated on a general request that we do so.

So that our office can respond as promptly as possible, if you determine that further inquiry is warranted, please notify us by May 15, 2016. Although we will consider requests after that date, our limited resources will be committed to any review of closed files on a first-in, first out basis. If you have any questions please contact Executive AUSA Carl Rostad at Carl.Rostad@usdoj.gov or (406) 761-7715.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael W. Cotter", with a stylized flourish at the end.

MICHAEL W. COTTER
United States Attorney

cc: Kris McLean, First Assistant U.S. Attorney